

DISTRICT OF NEVADA

Case No.: 2:19-cv-00471-APG-PAL

Order

Respondents

Mr. Daly indicates on the face of his petition that he did not appeal his state-court conviction or file a state postconviction habeas corpus petition. ECF No. 1-1, p. 1. A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted his or her available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act on each of his or her claims before presenting those claims in a federal habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has given the highest available state court the opportunity to consider the claim through direct appeal or state collateral review proceedings. *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir. 1981).

1 Thus, Mr. Daly's federal habeas claims are unexhausted, to the extent that he states any
2 claims. In order to seek federal habeas relief under § 2254, a person must allege he or she is in
3 custody pursuant to a state-court judgment in violation of the federal Constitution or laws and
4 treaties of the United States. Mr. Daly lists many U.S. Supreme Court cases and treaties,
5 including the Hague and Geneva Conventions. But he offers no discernible, non-frivolous
6 allegations that would state a claim for which federal habeas relief may be granted. He states,
7 for example, that "this is a crime of mischaracterization and genocide on paper carried out
8 against an innocent third-party civilian population" and refers at one point to the British
9 Admiralty Rule Committee. ECF No. 1-1.

10 In any event, this federal petition shall be dismissed without prejudice as improperly
11 commenced.

12 IT IS THEREFORE ORDERED that the Clerk shall detach and file the petition (ECF No.
13 1-1).

14 IT IS FURTHER ORDERED that this action is DISMISSED without prejudice.

15 IT IS FURTHER ORDERED that a certificate of appealability is DENIED, as jurists of
16 reason would not find the court's dismissal of this improperly commenced action without
17 prejudice to be debatable or incorrect.

18 IT IS FURTHER ORDERED that the Clerk shall ENTER JUDGMENT accordingly and
19 close this case.

20 Dated: April 8, 2019

21 

22 U.S. District Judge Andrew P. Gordon
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